

CITY OF LINCOLN/LANCASTER COUNTY
CONTRACT AWARD NOTIFICATION
SPECIFICATION 05-183
ANNUAL REQUIREMENTS FOR
PHARMACY SERVICES
FOR LANCASTER MANOR

DATE: November 1, 2005

CONTRACT PERIOD: Nov. 01, 2005 thru Oct 31, 2008

CONTRACTOR: PharMerica
6528 S. 118th St.
Omaha, NE 68137

PURCHASING DIVISION
K-STREET COMPLEX
440 SOUTH 8TH STREET
LINCOLN, NEBRASKA 68508
(402) 441-7410

COMPANY REPRESENTATIVE: Corey Rife, POM
TELEPHONE NO: 888-895-7133
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E-Mail Address:

THE CITY/COUNTY'S SPECIFICATIONS AND THE CONTRACTOR'S ACCEPTED PROPOSAL AND PRICING SCHEDULES, NOW ON FILE IN THE OFFICE OF THE CITY CLERK AND/OR THE COUNTY CLERK, ARE ADOPTED BY REFERENCE AND ARE AS FULLY A PART OF THIS CONTRACT FOR THE ABOVE-NAMED COMMODITY AS IF REPEATED VERBATIM HEREIN.

PER ATTACHED CONTRACT
SPECIFICATION 05-183

NO ACTION NEED BE TAKEN BY THE CONTRACTOR AT THIS TIME. ORDERS FOR MATERIAL WILL BE MADE AS NEEDED BY THE VARIOUS CITY/COUNTY DEPARTMENTS.

DEPARTMENTS REQUIRING CATALOGS AND/OR PRICING SCHEDULES SHALL NOTIFY THE CONTRACTOR DIRECTLY.

County Board
Dated: 10-25-05

CONTRACT DOCUMENTS

LANCASTER COUNTY

NEBRASKA

FOR

ANNUAL REQUIREMENTS FOR PHARMACY SERVICES
FOR LANCASTER MANOR

SPECIFICATION #05-183

CONTRACTOR: PharMerica, Omaha, NE

LANCASTER COUNTY, NEBRASKA

CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this ²⁵~~20~~ day of Oct., 2005, by and between PharMerica, 6528 S. 118th St., Omaha, NE 68137 hereinafter called contractor, and the Lancaster County, Nebraska, hereinafter called the County.

WITNESS, that:

WHEREAS, the County has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

Specification #05-183 for Pharmacy Services and related consulting services, supplies, equipment, and delivery thereof (Exhibit 1)

and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the County, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the County, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the most responsible, responsive Proposer for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and the County have agreed and hereby agree as follows:

1. AGREEMENT DOCUMENTS

1. The Agreement consists of this document and all other exhibits, specifications, supplementary conditions, offers, addenda, and other documents attached or referenced. It may also include amendments added in the future.

2. CONTRACTOR'S OBLIGATIONS

- 2.1 SERVICE DESCRIPTION. The Contractor will provide pharmacy and related services as described in the specifications (**see exhibit 1**), and the Contractor's response dated Aug. 10, 2005 (**see exhibit 2**). All work shall be completed to the County's satisfaction.
- 2.2 The Contractor must obtain prior written approval from the County for any change in the scope of work that materially increases or decreases the cost of performance. In addition, the Contractor must perform all modified work according to the terms of this Agreement.

- 2.3 The County will not accept any claim for extra work or materials furnished unless the Contractor receives prior written authorization from the County.
 - 2.3.1 Compensation for pharmaceutical related consulting and reporting services outside the scope of the RFP shall be billed at **\$45 per hour as authorized by the County.**
 - 2.3.2 All work or materials furnished without County's prior written authorization are at the Contractor's own risk and expense.
- 2.4 Contractor shall provide monthly inspections and reports for the Manor on pharmacy and related procedures and conduct monthly reviews of the services with Manor Personnel.
 - 2.4.1 All report functions listed in the RFP shall be performed by the Contractor's Consultant Pharmacists, including one (1) hour of drug destruction per month for the fee of **\$3.00 per occupied bed at the Manor per month.**
- 2.5 Contractor shall provide prescription medications in a mutually agreeable, unit dose dispenser with a tamper evident container which is impermeable to moisture and approved by the Nebraska Board of Examiners in Pharmacy.

3. COUNTY'S OBLIGATIONS

- 3.1 The County shall furnish one copy of data in it's possession pertinent to completion of the work. Upon request from the Contractor the County shall provide, within reason, any additional information necessary to perform the duties as outlined herein.
- 3.2 The County shall make information and data concerning policies, standards, criteria, and studies available for reproduction.
- 3.3 The County shall compensate the Contractor for pharmaceutical related consulting and reporting services as indicated in section 2 , items 2.3 and 2.4.

4. PAYMENTS

- 4.1 The County will pay the Contractor and the Contractor shall remit to the County for performance of services according to the specifications (**see Exhibit 1**).
- 4.2 The County will make payments within 30 calendar days from the date the Contractor submits invoices and claims.
 - 4.2.1 An estimate and progress report for work completed through the last day of the preceding calendar month shall accompany all requests for payment.
- 4.3 The Contractor may not make any charge or claim for damages that result from delays or hindrances beyond the County's control.
 - 4.3.1 The sole form of compensation for delay or hindrances is a reasonable extension of time agreed to by the parties.
 - 4.3.2 An extension is not a waiver of any of the County's legal rights.
- 4.4 All documents the Contractor presents to the County under this agreement are the County's permanent property.

- 4.4.1 The Contractor must deliver all required reports before the County will make final payment.

5. CONFIDENTIALITY

- 5.1 If and to the extent, and so long as, required by the provisions enacted by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, but not otherwise, Contractor does hereby assure the County that Contractor will appropriately safeguard protected health information made available to or obtained by Contractor (**see Attachment 1**).

6. TERM OF AGREEMENT

- 6.1 The Work included in this Contract shall for the annual requirements beginning **November 1, 2005 through October 31, 2008** .
- 6.2 Contract shall be renewable for one (1) additional three (3) year period *by mutual consent of the parties* (November 1, 2008 through October 31, 2011)
- 6.3 The County shall notify the Contractor of any determination to extend this Agreement no less than thirty (30) days prior to the beginning of the relevant optional year.

7. TERMINATION OF THE AGREEMENT

- 7.1 The Agreement may be terminated by the following:
- 7.1.1 Termination for Convenience. The County reserves the right to terminate any part of or the entire contract that may result from this bid without cause and at any time provided the Contractor is given thirty (30) calendar days written notice.
- 7.1.1.1 The Contractor may cancel said agreement upon ninety days written notice (to allow sufficient time for the County to secure another provider).
- 7.1.2 Termination for Cause. The County may terminate the Contract if the Contractor:
- 7.1.2.1 Refuses or fails to supply enough properly skilled workers or proper equipment to satisfactorily provide complete needs assessment as requested.
- 7.1.2.2 Disregards laws, ordinances, or regulations or orders of a public authority having jurisdiction over the Contract.
- 7.1.2.3 Otherwise commits a substantial breach of any provision of the Contract Document.
- 7.2 The County and the Contractor shall have the following obligations upon termination:
- 7.2.1 The County must notify the Contractor in writing. Upon receipt of notice, the Contractor must cease all work and proceed to close out all operations.
- 7.2.2 The Contractor must deliver all reports and estimates entirely or partially completed and all unused materials supplied by the County.
- 7.2.3 The Contractor must appraise the work completed and submit the appraisal to the County for evaluation.

7.2.3.1 In the event of termination for any reason, Contractor shall make available to the County or its designate a full accounting of the status of all county accounts.

7.2.4 The County will pay the Contractor a fee for the percentage of the work actually completed as payment in full for services rendered to the date of termination.

7.2.4.1 The fee is a percentage of the Contractor's fee as described in the offer **(see Exhibit 2)**.

7.2.4.2 The County will make final payment within 60 days of contractor's delivery and County's acceptance of all completed or partially completed work.

8. INSURANCE REQUIREMENTS

8.1 Prior to commencement of any services, the Contractor shall provide the County with the requested insurance certificates identifying this Agreement by name and number **(see Exhibit 3)**. All required insurance policies, except Workers' Compensation and Professional Liability, must name the County as Additional Insured with regard to this project.

8.1.1 The Contractor must give the County thirty days written notice before cancelling any policy.

8.1.2 The Contractor's failure to furnish evidence of insurance may be considered a breach of contract.

8.1.3 The Contractor must require any subcontractors to provide Worker's Compensation and Employer's Liability with at least as much coverage as that provided by the Contractor.

9. NON-TRANSFERABLE RESPONSIBILITIES

9.1 No assumption or takeover of any of Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than Contractor whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration, for any reason whatsoever, may occur without County's express prior written approval.

9.2 If any such assumption, takeover, or unauthorized performance does occur without such prior written approval, this Agreement will become void for failure of its essential purpose. Such act is therefore a material breach of this Agreement, upon which County may pursue any lawful remedy.

10. ASSIGNMENT AND SUBCONTRACTING

10.1 Contractor shall not assign its rights, delegate its duties or subcontract any performance of our Agreement without the express prior written consent of County. Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which County may immediately terminate the Agreement in accordance with the provisions stated in "termination", herein.

11. TIME IS OF THE ESSENCE

11.1 Time is of the Essence. If any anticipated or actual delays arise, Contractor shall immediately notify County. Regardless of notice if deliveries are not made at the time agreed upon, County may, at its sole discretion, terminate this Agreement and proceed pursuant to "termination" as stated herein.

12. INDEPENDENT CONTRACTOR STATUS

12.1 This Agreement is by and between County and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Contractor. The employees and agents of one party are not the employees or agents of the other party for any purpose whatsoever.

12.2 Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of worker's compensation liability, solely employees of Contractor and not employees of County. Contractor shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of Contractor hereunder.

12.3 The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security and safety requirements.

13. LICENSES AND BONDS

13.1 The Contractor shall obtain whatever insurance, licenses and bonds and fulfill whatever other requirements as are required in order to perform this Agreement, and shall provide evidence of such insurance, licenses and bonds to the County.

14. GOVERNING LAWS

14.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

15. THE CONTRACT DOCUMENTS comprise the Contract, and consist of the following:

1. The Specifications (**Exhibit #1**)
2. The Accepted proposal and any attachments (**Exhibit #2**)
3. The Insurance Requirements (**Exhibit #3**)
4. The HIPAA Business Associates Agreement (**Attachment #1**)
5. The Contract Agreements

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the County hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

ATTACHMENT #1
FOR: Pharmacy Services for Lancaster Manor
LANCASTER COUNTY
HIPAA Business Associate Agreement

This Agreement is made effective the ²⁵~~9th~~ Day of October, 2005, by and between the County of Lancaster, Nebraska ("County"), on behalf of Lancaster County Manor ("Covered Entity") and PharMerica, 6528 S. 118th St., Omaha, NE 68137 ("Business Associate") (collectively the "Parties").

1. BACKGROUND

- 1.1 Covered Entity and Business Associate are parties to a contract entitled Pharmacy Services (the "Contract"), whereby Business Associate agrees to perform certain services for or on behalf of Covered Entity.
- 1.2 Covered Entity is an agency of Lancaster County that has been designated in whole or in part by the County as a health care component for purposes of the HIPAA Privacy Rule.
- 1.3 The relationship between Covered Entity and Business Associate is such that the Parties believe Business Associate is or may be a "business associate" within the meaning of the HIPAA Privacy Rule.
- 1.4 The Parties enter into this Business Associate Addendum to the Contract with the intention of complying with the HIPAA Privacy Rule provision that a covered entity may disclose protected health information to a business associate, and may allow a business associate to create or receive protected health information on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

2. DEFINITIONS - The following terms shall have the following meaning in this Agreement:

- 2.1 "HIPAA" means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- 2.2 "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 2.3 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 2.4 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 2.5 "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- 2.6 "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his designee.
- 2.7 Unless otherwise defined in this Agreement, terms used herein shall have the same meaning as those terms have in the Privacy Rule.

3. OBLIGATIONS OF BUSINESS ASSOCIATE

- 3.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- 3.2 Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- 3.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

- 3.4 Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- 3.5 Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.6 Business Associate agrees to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- 3.7 Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual.
- 3.8 Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- 3.9 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, and to provide this information to Covered Entity or an Individual to permit such a response.

4. PERMITTED USES AND DISCLOSURES

- 4.1 Except as otherwise limited in this Agreement, if the Contract permits, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure:
 - 4.1.1 would not violate the Privacy Rule if done by Covered Entity; or
 - 4.1.2 would not violate the minimum necessary policies and procedures of the Covered Entity.
- 4.2 Except as otherwise limited in this Agreement, if the Contract permits, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, if the Contract permits, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that:
 - 4.3.1 disclosures are Required By Law; or
 - 4.3.2 Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- 4.4 Except as otherwise limited in this Agreement, if the Contract permits, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- 4.5 Notwithstanding the foregoing provisions, Business Associate may not use or disclose Protected Health Information if the use or disclosure would violate any term of the Contract.

5. TERM AND TERMINATION

- 5.1 **Term.** The Term of this Agreement shall be effective as of the effective date stated above and shall terminate when the Contract terminates.
- 5.2 **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, at its option:
 - 5.2.1 Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 5.2.2 Immediately terminate this Agreement; or
 - 5.2.3 If neither termination nor cure are feasible, report the violation to the Secretary as provided in the Privacy Rule.
- 5.3 **Effect of Termination.**
 - 5.3.1 Except as provided in paragraph (2) of this section or in the Contract, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - 5.3.2 In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. GENERAL TERMS AND CONDITIONS

- 6.1 This Agreement amends and is part of the Contract.
- 6.2 Except as provided in this Agreement, all terms and conditions of the Contract shall remain in force and shall apply to this Agreement as if set forth fully herein.
- 6.3 In the event of a conflict in terms between this Agreement and the Contract, the interpretation that is in accordance with the Privacy Rule shall prevail. In the event that a conflict then remains, the Contract terms shall prevail so long as they are in accordance with the Privacy Rule.
- 6.4 A breach of this Agreement by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.

The Parties to the Agreement do hereby agree that all the terms and conditions of this to the Agreement shall by these presents be binding upon themselves, and their heir(s), administrators, executors, legal and personal representatives, successors, and assigns.